



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 24 2011

201116040

U.I.L. 408.03-00

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XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

SE:T:EP:RA:T3

Legend:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
IRA X	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
IRA Y	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount B	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount C	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount I	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount E	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount F	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount G	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount L	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Amount O	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Company H	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Company J	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Company K	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Individual M	= XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Bank N = xxxxxxxxxxxxxxxxxxxxxxxx
Bank P = xxxxxxxxxxxxxxxxxxxxxxxx
Court L = xxxxxxxxxxxxxxxxxxxxxxxx

201116040

Dear xxxxxxxxxxxx:

This letter is in response to your letter dated xxxxxxxxxxxx, as supplemented by several email correspondence, submitted on your behalf by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

You assert that your failure to accomplish a rollover of Amount F within the 60-day period prescribed by section 408(d)(3) of the Code was due to the fact that you were defrauded by Company H, J, K and Individual M and that Bank N and Bank P refused to open an IRA for you after you had recovered a portion of the IRA X funds.

Taxpayer A, age 65, states that he and his wife were divorced in xxxxxxxxx.

Taxpayer A represents that in xxxxxxxxxxxx, when he accepted employment overseas and left the country, his ex-spouse brought an action in Court L for seizure of assets to protect and provide for the required alimony and child support and got a part of his IRA X funds totaling Amount E seized.

Taxpayer A states that in xxxxxxxxxxxx, when he returned from overseas, he learned about the seizure of his IRA funds and in order to protect his assets, he contacted Individual M who provided him with a plan to roll over the remaining funds in his IRA X account to another IRA trust that would invest the funds in foreign entities in which Taxpayer A could self direct the investments. Accordingly, Taxpayer A established his new IRA Y with Company H and transferred Amount B from his IRA X to IRA Y. Taxpayer also invested an additional amount, Amount C, a non-IRA account with Company H. Amount B and Amount C total amount G.

Taxpayer A further states that as part of Taxpayer's investment plan, Company H was to invest the IRA funds, through Company J in Company K where Taxpayer A would have the ability to direct the investment of the funds in E-trade accounts through them. Accordingly, Taxpayer A subscribed to 9,000 shares of Company

201116040

K for a price of Amount G. These funds were transferred to Company J via Company H.

Taxpayer A states that it was not until xxxxxxxxx that he realized that Company H and Companies J and K were tied to Individual M and that he had been defrauded. Taxpayer A had previously received funds totaling Amount I which was reported and taxed on Taxpayer's xxxxxxxx and xxxxxxxx Forms 1040 prior to his discovery of the fraud, thus leaving a balance of Amount L of IRA funds invested in Company K. Taxpayer A states that at this point he tried to withdraw his remaining funds and his personal efforts resulted in a total recovery of Amount F in xxxxxxxxxxxx, which represented a recovery of both IRA and non-IRA funds.

Taxpayer A states that after he recovered Amount F, he deposited it with Bank N as a matter of convenience. Taxpayer A further states that on xxxxxxxxxxxxxxxx, he transferred Amount I from Bank N to Bank P.

Taxpayer A asserts that he tried to open an IRA account with Bank N and Bank P but the banks refused to establish an IRA for him because he did not have any documentation that Amount F had come from another IRA.

Based upon the foregoing facts and representations, Taxpayer A requests that the Service waive the 60 day rollover requirement with respect to the recovery of Amount F from IRA Y.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of

201116040

such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover of Amount F was due to the fact that he was defrauded by Individual M and Company H, J, and K and when he recovered Amount F, he attempted to open an IRA account with Bank N and Bank P but they refused to open an IRA because Taxpayer A did not have documentation of the source of the funds from another IRA. However, since Amount F represents a recovery of both IRA and non-IRA funds, Taxpayer will only be permitted to rollover the pro rata portion of Amount F applicable to IRA X funds. Thus, Taxpayer A will be permitted to rollover Amount O (Amount F times Amount L divided by the sum of Amount L and Amount C).

201116040

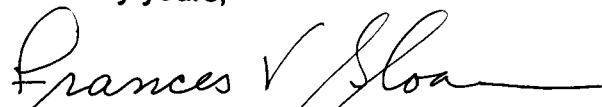
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount O. Taxpayer A is granted a period not to exceed 60 days as measured from the date of issuance of this ruling letter to contribute Amount O into another Rollover IRA set up and maintained in the name of Taxpayer A. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount O will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions concerning this ruling, please contact xxxxxxxxxx, xxxxxxxxxx SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxx.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437